

**BERNALILLO COUNTY**  
**BOARD OF COUNTY COMMISSIONERS**

**ORDINANCE NO. 2016-12**

**AMENDEMENT TO THE COUNTY OF BERNALILLO SCRAP TIRE ORDINANCE**  
**CHAPTER 14- BUSINESS REGISTRATION AMEDING DEFINITIONS**

**Sec. 14-501. Short title**

This article shall be known and may be cited at the “County of Bernalillo Scrap Tire Ordinance.”

**Sec. 14-502. Definitions**

*Person* means any individual, partnership, company, corporation, firm, association, trust, estate or legal entity, not including government entities.

*Scrap tire* means a tire that is no longer suitable for its originally intended purpose because of wear, damage, defect or obsolescence, but does not include a tire that is used as a feedstock for tire derived fuel at a permitted or registered facility that is in compliance with applicable federal, state, and local regulations.

*Scrap tire cutter* is any mechanical device capable of safely cutting any scrap tire received by any scrap tire generator into at least four (4) pieces within one minute or less and approved by the county manager or designee.

*Scrap tire generator* means any person operating a wholesale or retail tire sales business that generates scrap tires.

*Scrap tire generator license* is the license that may be granted by the County pursuant to this ordinance that allows a scrap tire generator to operate in the County for a period of one year.

*Tire-derived fuel* means tires that produce a low sulfur, high-heating-value fuel.

**Sec. 14-503. Prohibited Act**

**CONTINUATION PAGE 2, ORDINANCE 2016- 12.**

1           No person who is a scrap tire generator shall be allowed to operate a business within the  
2           unincorporated portion of Bernalillo County unless that person possesses an operational scrap  
3           tire cutter on the premises where scrap tires are generated.

4           Sec. 14-504. License

5           The County shall issue a scrap tire license to any applicant who meets all of the  
6           requirements of this Ordinance as determined by the county manager or designee.

7           Sec. 14-505. Application

8           Application for a Scrap Tire Generator Licenses shall be for a period of one year.  
9           Application shall be made upon blank forms prepared and made available by the county manager  
10          or designee and shall state:

11          (a)     the name, home address, home phone, business phone, and business address of the  
12          applicant;

13          (b)     the type of ownership of the business, i.e., corporation, limited liability company,  
14          partnership, sole proprietorship, etc., all officers and agents of the business, and affirm that the  
15          applicant is the person or legal entity that will be operating the business;

16          (c)     a description of the scrap tire cutter owned or leased by the applicant; if the scrap  
17          tire cutter is not owned by the applicant, a copy of the lease must be included;

18          (d)     a statement describing the physical space on the premises where the applicant  
19          intends to place and use the scrap tire cutter;

20          (e)     such other information as the county manager or designee shall find reasonably  
21          necessary to effectuate the purpose of this article and arrive at a fair determination of whether the  
22          terms of this article have been complied with;

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(f) if the applicant is approved, and if any of the information contained therein changes, the application shall be updated by the applicant within ten (10) calendar days of such change. Failure to comply with this provision shall be grounds for the suspension and or revocation of the scrap tire generator license pursuant to this article as well as business registration status pursuant to §§ 14-31 through 14-38 of this Ordinance.

**Sec. 14-506. Duties of Scrap Tire Generators**

(a) Every person who is a scrap tire generator shall possess and use a scrap tire cutter to cut the scrap tires on any premises in that person's possession or control into four (4) or more pieces for lawful disposal or recycling;

(b) Scrap tire generators shall take all reasonable precautions to ensure the safe operation of the scrap tire cutter;

(c) Every scrap tire generator shall have a commercial refuse bin of a size and pickup frequency sufficient for the removal of the cut tires from its premises and that all scrap tires shall be placed in said bin within a reasonable time.

**Sec. 14-507. Fee**

The County will establish a fee schedule by resolution.

**Sec. 14-508. Investigations and Inspections**

(a) Within ten days after receipt of an application as provided herein, the county manager or designee shall cause an onsite inspection to be made of the applicant's premises and an investigation of the operation.

(b) Upon presenting proper identification and with notice, the county manager or designee shall be allowed access to the premises of any licensed scrap tire generator for both the initial as well as subsequent compliance inspections. Permits may be suspended for failure to

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comply with the requirements of this chapter, as well as for violation of other applicable laws, regulations, and ordinances.

**Sec. 14-509. Appeals**

(a) Any party aggrieved by an order or decision granting or denying the scrap tire generator license under this article may appeal such grievance to the county manager or designee to hear such appeal.

(b) Written notice of such an appeal must be given to the county manager or designee within 30 calendar days after the order or notice of the decision is mailed to the aggrieved party.

The notice shall contain an enumeration of the order or decision complained of, the date of the issuance of such order or decision, and a brief statement of the reasons why such practice, order or decision is unlawful, unwarranted, or creates an unnecessary hardship. The 30-day period is jurisdictional and may not be waived.

(c) Hearing on appeals shall be held within 30 calendar days after notice of appeal is received. A hearing may be canceled by agreement of the appellant and, if applicable, the party or official who is the subject of an appeal.

(d) For the purposes of hearing appeals the hearing officer shall have the power to order inspections and to require the submission of such plans and specifications or other evidence, as he or she deems necessary.

(e) On the hearing of an appeal the hearing officer shall have the power to reverse, affirm or amend any order or decision of any official complained of by the aggrieved party.

(f) Within five working days of the completion of the hearing the hearing officer shall issue a written decision memorializing the adjudication of the appeal. Every decision or

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opinion of the hearing officer shall be made a part of the official records of the county, and a copy of such decision or opinion shall be given to the aggrieved party.

(g) If any party, including the county, feels the hearing officer acted improperly, or that such action as the hearing officer took is arbitrary, capricious or unlawful, said party shall have the right to appeal to the Second Judicial District Court. The hearing officer shall maintain a record of all appeals heard before it, and all appeals to the District Court shall be from the record. Said record shall consist of a transcript or magnetic recording of all testimony taken during the hearing, all exhibits offered, all plans and specifications as may have been required, and a copy of the hearing officer's decision. The filing of an appeal in the District Court does not itself stay enforcement of the decision of the hearing officer, but the hearing officer may grant, or the District Court may order, such a stay upon appropriate terms.

(h) Fifteen day's notice of the time, place, and nature of the hearing shall be afforded to all parties. In conducting a hearing, the hearing officer shall afford all parties an opportunity for a full and fair hearing, including right to counsel and the right to call and examine witnesses, introduce exhibits and cross-examine witnesses who testify. The hearing shall not be bound by the technical rules of evidence. Notwithstanding the above, the hearing shall be conducted in an orderly manner, and the hearing officer shall exclude all irrelevant, immaterial, and unduly repetitious evidence

**Sec. 14-510. Suspension and Revocation**

(a) The county manager may suspend or revoke any license issued under this article pending the hearing provided in this section upon the filing of a sworn complaint with such county manager by any citizen, or upon complaint by any peace officer or upon the initiative of the county manager, charging the licensee of having violated any one or more of the provisions

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1 of this article. Such suspension shall become effective upon the service on the licensee of notice  
2 of such suspension.

3 (b) The requirements of such notice shall be satisfied if personal service of the notice  
4 is had upon the licensee or is posted in a conspicuous place upon the licensed establishment. The  
5 official serving such notice shall have the authority to remove the license from the premises and  
6 to deliver such license to the county manager. The county manager shall set a date for a hearing  
7 on such complaint which shall be held not more than thirty days, nor less than ten days after the  
8 date of any suspension, unless waived by all parties thereto. The county manager may appoint a  
9 hearing officer to adjudicate all matters arising from this section. The notice of suspension  
10 provided for in this subsection, shall specify the date and time of the hearing. The licensee shall  
11 have the right to appear at such hearing and to produce evidence. If, after holding the hearing, the  
12 county manager shall determine that the scrap tire generator was in violation of any provision of  
13 this article, as charged in the complaint, then the county manager shall issue an order either  
14 suspending the license for up to 30 days or permanently revoking such license. The licensee shall  
15 have twenty days from the date of such suspension of permanent revocation in which to file  
16 notice with the county manager of his appeal to the county commission from the order of the  
17 county manager. The county manager shall provide for a commission hearing on such appeal at  
18 the earliest convenient regular commission meeting and shall notify the appellant of the date of  
19 the commission hearing.

20 (c) Acts or omissions in violation of this article constitute grounds for revocation or  
21 suspension of a license issued under this article are also grounds for the county manager to  
22 commence a civil or criminal prosecution for any violation of this article and seek the penalties  
23 provided in § 1-6 of the Bernalillo County Code.

Sec. 14-511. Severability

The sections, paragraphs, sentences, clauses and phrases of this article are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared invalid, unenforceable or unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unenforceability or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this article.

Sec. 14-512. Penalty

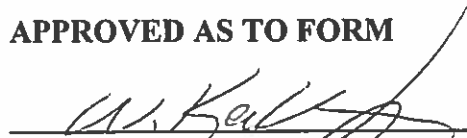
Violations of this chapter are punishable as provided in § 1-6 of the Bernalillo County Code and by the suspension and/or revocation of the Scrap Tire Generator License as provided in this article.

Sec. 14-513. Effective Date

This article shall take effect one year after final adoption by the county commission.

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
BERNALILLO COUNTY, NEW MEXICO** this 12<sup>th</sup> day of April, 2016.

**APPROVED AS TO FORM**


  
W. Ken Martinez, County Attorney

**ATTEST**

  
Maggie Toulouse Oliver, County Clerk



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